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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,285	10/27/2004	Lionel Breton	112701-432	6015

7590 09/15/2005
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EXAMINER

BARNHART, LORA ELIZABETH

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/505,285

Applicant(s)

BRETON ET AL.

Examiner

Lora E. Barnhart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, 24, and 25, drawn to a composition comprising a photoprotecting-effective amount of at least one probiotic lactic acid bacterium and at least one other component.

Group II, claim(s) 9 and 26, drawn to a nutritionally complete pet food comprising a photoprotecting-effective amount of at least one probiotic lactic acid bacterium and at least one other component.

Group III, claim(s) 10-16 and 27, drawn to a method of preparing a therapeutic composition.

Group IV, claim(s) 17-23, drawn to a method for improving the photoprotective function of the skin of pets comprising administering to the pet a therapeutically effective amount of a composition comprising at least one probiotic lactic acid bacterium and at least one other component.

Group V, claim(s) 28, drawn to a composition comprising at least one probiotic lactic acid bacterium and at least one other component in an ingestible carrier.

Group VI, claim(s) 29, drawn to a method for protecting skin.

The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: They are not unified by a special technical feature.

The expression "special technical feature" refers to those features that define a contribution which each of the claimed inventions, considered as a whole, makes over

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the prior art. Thus, a feature found in the prior art cannot be considered to be a special technical feature.

The Groups are unified by a composition comprising at least one probiotic lactic acid bacterium and at least one other component that may be a yeast. Cavadini et al. (1999, U.S. Patent 5,968,569; reference A) teaches a composition comprising *Lactobacillus johnsonii*, a probiotic lactic acid bacterium, and *Saccharomyces cerevisiae*, a yeast (Example 7). Because the composition of Group I is known in the art, it cannot be considered a special technical feature under PCT Rule 13.2.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Additional components: (a) yeast and (b) carotenoid, as in claim 1, for example.

Lactic acid bacteria: (c) Lactobacilli, (d) Bifidobacteria, and (e) Enterococci, as in claim 2, for example.

Specific lactic acid bacteria: (f) *Lactobacillus johnsonii*, (g) *Lactobacillus reuteri*, (h) *Lactobacillus rhamnosus*, (i) *Lactobacillus paracasei*, (j) *Lactobacillus casei*, (k) *Bifidobacterium bifidum*, (l) *Bifidobacterium breve*, (m) *Bifidobacterium longum*, (n) *Bifidobacterium animalis*, (o) *Bifidobacterium lactis*, (p) *Bifidobacterium infantis*, (q) *Bifidobacterium adolescentis*, (r) *Bifidobacterium pseudocatenulatum*, (s) *Enterococcus faecium*, and (t) *Enterococcus sp.*, as in claim 3, for example.

Strains: (u) CNCM I-1225, (v) CNCM I-2116, (w) CNCM I-2168, and (x) CNCM I-2170, as in claim 4, for example.

Forms: (y) live form, (z) semi-active form, and (a') deactivated form, as in claim 5, for example.

Carotenoids: (b') beta-carotene, (c') gamma-carotene, (d') alpha-carotene, (e') lycopene, (f') zeaxanthine, and (g') lutein, as in claim 6, for example.

Yeasts: (h') *Debaryomyces*, (i') *Kluyveromyces*, (j') *Saccharomyces*, (k') *Yarrowia*, (l') *Zygosaccharomyces*, (m') *Candida*, and (n') *Rhodotorula*, as in claim 7, for example.

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Food forms: (o') powdered, (p') dried, (q') wet, (r') chilled, and (s') shelf-stable, as in claim 26, for example.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. That is, applicant should elect ONE additional component, ONE form, and ONE food form. Applicant should also elect ONE lactic acid bacterium, ONE specific lactic acid bacterium, and ONE strain, such that the elected strain is an example of the elected specific lactic acid bacterium and that the elected specific lactic acid bacterium is an example of the elected lactic acid bacterium. Finally, if species (a) is elected, applicant should also elect ONE yeast; if species (b) is elected, applicant should also elect ONE carotenoid.

The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: 1-29.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Pursuant to PCT Rule 13.2 and

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PCT Administrative Instructions; Annex B, Part 1(f)(I)(B)(2), the species are not art-recognized equivalents.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lora E. Barnhart whose telephone number is 571-272-1928. The examiner can normally be reached on Monday-Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

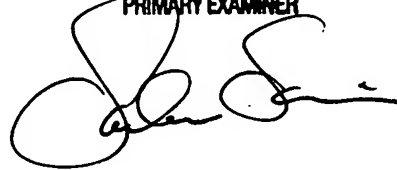
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lora E Barnhart

leb

SANDRA E. SAUCIER
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Sandra E. Saucier', written over the printed name and title.